IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1679 OF 2004

Mr. Mahendra Mulji Asher ...Petitioner.

V/s

M/s. Jagat Investment
and Anr. ...Respondents.

Mr. Amit Sheth for the petitioner.
Mr. S.V. Marwadi with Mr. Yogesh Yagnik for respondent No.1.
Mr.A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 3rd June, 2005

P.C.:

1. Heard the learned Counsel for the petitioner and the learned counsel for respondent No.1.

2. Petitioner is the original accused in a complaint filed by respondent No.1 in the Court of Metropolitan Magistrate, 16th Court, Ballard Pier under section 138 read with section 142 of the Negotiable Instruments Act.

3. Petitioner was convicted by the Metropolitan Magistrate and was sentenced to suffer simple imprisonment till rising of the court and he was further directed to pay compensation of Rs 5 lacs within a period of three months from the date of the

order and, in default, to suffer simple imprisonment for six months. Against this judgment and order, petitioner preferred Criminal Revision Application in the Sessions Court being Criminal Revision Application No.794 of 2003. Criminal Revision Application, however, was dismissed and the order passed by the Trial Court was confirmed. Miscellaneous Application No.125 of 2004 filed by the complainant for enhancement of the sentence, however, was dismissed. Against the said judgment and order of the Sessions Court the petitioner has filed the present Writ Petition.

4. Though several opportunities were given to the petitioner to deposit the amount of compensation, till today, that amount has not been deposited. The learned Counsel appearing on behalf of the petitioner vehemently argued that both, the Trial Court and Sessions Court had committed an error in holding that the complainant had proved that there was an existing debt and liability which was due and payable to the complainant. It is submitted that the complainant had failed to produce any documentary evidence to prove his case that he had sold shares worth Rs 8,81,510 to the petitioner. It is further submitted that respondent No.1 had failed to give description as to

the number of shares, name of the Company and the date on which the shares were sold by the complainant. He has further submitted that the Sessions Court had erred in holding that the petitioner had not discharged the burden put on him under section 139 of the Negotiable Instruments Act. It is submitted that the respondent No.1 had failed to prove that he had served statutory demand notice on the petitioner - accused because the address mentioned on the notice was incomplete and that the signature on the registered acknowledgement due was not that of the Petitioner. He submitted that there was a structural defect in the cheque itself. It is submitted that the cheque was a stale cheque and that there was no reason to put a rubber stamp of respondent No.1 - Company on the said cheque. It is further submitted that the date, figure and signature were in one ink whereas the amount in words and the name of the payee was in different ink. It is further submitted that no account number was written on the cheque.

5. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the petitioner. Both the Courts below have, after appreciating the evidence on record, have given concurrent finding. There is no error of law which is

apparent on the record committed by both the Courts below. The submissions of the learned Counsel appearing on behalf of the petitioner that there was no provision under the Criminal Procedure Code for awarding simple imprisonment in the event of default in the payment of compensation as directed by the Sessions Court also cannot be accepted. The Supreme Court in the case of Hari Kishan Vs. Sukhbir Singh reported in **AIR 1988 SC 2127** has held that the Court may enforce the order to pay compensation by imposing sentence in default. Relying on the said judgement, the Supreme Court in its judgment in the case of Suganthi Suresh Kumar Vs. Jagdeeshan reported in **AIR 2002 SC 681** has observed in para 11 as under:-

> "11. When this Court pronounced in Hari Singh V. Sukbir Singh (supra) that a Court may enforce an order to pay compensation "by imposing a sentence in default" it is open to all courts in India to follow the said course. The said legal position would continue to hold good until it is overruled by a larger Bench of this Court. Hence, learned single judge of the High Court of Kerala has committed an impropriety by expressing that the said legal direction of this Court should not be followed

> by the subordinate courts in Kerala. We express our disapproval of the course adopted by the said Judge in Rajendran Vs. Jose 2001 (3) Kerala Law Times 431. It is unfortunate that when the Sessions Judge has correctly done a course in accordance with the discipline the single Judge of the High Court has incorrectly reversed it."

In view of the ratio laid down by the Supreme Court in the said case, in my view, the Revisional Court was empowered to impose the sentence in default of payment of compensation. Though several opportunities were given to the petitioner yet, the compensation has not been paid. There is no merit in the submissions made by the learned counsel appearing on behalf of the Petitioner.

6. Criminal Writ Petition is accordingly dismissed.

7. After this order was pronounced, the petitioner who is present in person, requested that the impugned Order may be stayed for a period of 8 weeks in order to enable him to approach the Hon’ble Supreme Court against this order. Since the petitioner had challenged the order of conviction and sentence under

the provisions of section 138 read with section 142 of the Negotiable Instruments Act, in the interest of justice, the impugned judgment and order is stayed for a period of 6 weeks from today.

V.M. KANADE, J.